

Senate Bill No. 2097

CHAPTER 1147

An act to amend Section 11010.05 of the Business and Professions Code, and to amend Sections 51.2, 51.3, and 51.4 of, and to add Sections 51.10, 51.11, and 51.12 to, the Civil Code, relating to civil rights.

[Approved by Governor September 30, 1996. Filed
with Secretary of State September 30, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

SB 2097, Haynes. Civil rights: senior housing.

(1) Existing law provides that a person who proposes to create a senior citizen housing development, through phased development and marketing of subdivision interests may apply for and obtain a public report for a phase of the development, even though the phase itself will not include a sufficient number of dwelling units to qualify as a senior citizen housing development.

This bill would limit the applicability of this provision to persons who propose to create a senior housing development before January 1, 1997.

(2) Existing provisions of the Unruh Civil Rights Act, with certain exceptions, prohibit various forms of arbitrary discrimination by business establishments. One of the exceptions to the prohibitions of this act is for senior housing meeting prescribed criteria, including the requirement that the accommodations are designed to meet the physical and social needs of senior citizens, except as specified.

This bill would provide that the requirement that the accommodations are designed to meet these needs does not apply to the County of Riverside.

(3) Existing law provides that where accommodations constructed before February 8, 1982, are not specially designed to meet the physical and social needs of seniors but meet other specified criteria for senior citizen housing, a business establishment may establish and preserve that housing for senior citizens until January 1, 2000, in accordance with that criteria.

This bill would provide that these provisions do not apply to the County of Riverside.

(4) Existing law permits the establishment and preservation of specially designed and accessible housing for senior citizens, as specified. Existing law defines, for purposes of these provisions, a senior citizen housing development as a residential development developed, substantially rehabilitated, or substantially renovated for senior citizens consisting of (a) at least 70 dwelling units built before

January 1, 1996, or 150 dwelling units built on or after January 1, 1996, in a metropolitan statistical area with a population of at least 1,000 residents per square mile or 1,000,000 total residents, (b) at least 100 dwelling units in a metropolitan statistical area with a population not to exceed 999 residents per square mile and not to exceed 399,999 total residents, or (c) at least 35 dwelling units in any other area.

This bill would, among other things with respect to the County of Riverside, enact special provisions defining a senior citizen housing development to mean a residential development developed with more than 20 units as a senior community by its developer, zoned as a senior community by local governmental entities, or characterized or qualified as a senior community as specified. It also would expand the definition of who is a qualified permanent resident for purposes of these provisions.

The bill would make a statement of legislative intent in this regard.

The people of the State of California do enact as follows:

SECTION 1. Section 11010.05 of the Business and Professions Code is amended to read:

11010.05. A person who proposes to create a senior citizen housing development, as defined in Sections 51.3 and 51.11 of the Civil Code, before January 1, 1997, through phased development and marketing of subdivision interests, may apply for and obtain a public report for a phase of the subdivision as part of a senior citizen housing development even though the phase itself will not include a sufficient number of dwelling units to qualify as a senior citizen housing development. The applicant shall submit the following statement, signed under penalty of perjury, with the application for a public report:

(a) A statement of the applicant's intent that the subdivision phase shall ultimately be part of a senior citizen housing development.

(b) An explanation of the annexation of the subdivision phases for the creation of the senior citizen housing development.

(c) Evidence satisfactory to the department that the applicant owns or controls real property capable of being subdivided and annexed to the original subdivision to provide a sufficient number of dwelling units to satisfy the numerical requirements for a senior citizen housing development.

SEC. 2. Section 51.2 of the Civil Code is amended to read:

51.2. (a) Section 51 shall be construed to prohibit a business establishment from discriminating in the sale or rental of housing based upon age. Where accommodations are designed to meet the physical and social needs of senior citizens, a business establishment may establish and preserve that housing for senior citizens, pursuant to Section 51.3, except housing as to which Section 51.3 is preempted by the prohibition in the federal Fair Housing Amendments Act of

1988 (P.L. 100-430) and implementing regulations against discrimination on the basis of familial status. Where accommodations constructed before February 8, 1982, meet the criteria for senior citizen housing specified in Section 51.4, a business establishment may establish and preserve that housing for senior citizens until January 1, 2000, in accordance with Section 51.4.

(b) This section is intended to clarify the holdings in *Marina Point, Ltd. v. Wolfson* (1982), 30 Cal. 3d 72, and *O'Connor v. Village Green Owners Association* (1983), 33 Cal. 3d 790.

(c) This section shall not apply to the County of Riverside.

SEC. 3. Section 51.3 of the Civil Code is amended to read:

51.3. (a) The Legislature finds and declares that this section is essential to establish and preserve specially designed accessible housing for senior citizens. There are senior citizens who need special living environments and services, and find that there is an inadequate supply of this type of housing in the state.

(b) The Legislature finds and declares that different age limitations for senior citizen housing are appropriate in recognition of the size of a development in relationship to the community in which it is located.

(c) For the purposes of this section, the following definitions apply:

(1) "Qualifying resident" or "senior citizen" means a person 62 years of age or older, or 55 years of age or older in a senior citizen housing development.

(2) "Qualified permanent resident" means a person who meets all of the following requirements:

(A) Was residing with the qualifying resident or senior citizen prior to the death, hospitalization, or other prolonged absence of, or the dissolution of marriage with, the qualifying resident or senior citizen.

(B) Was 45 years of age or older, or was a spouse, cohabitant, or person providing primary physical or economic support to the qualifying resident or senior citizen.

(C) Has an ownership interest in, or is in expectation of an ownership interest in, the dwelling unit within the housing development that limits occupancy, residency, or use on the basis of age.

(3) "Senior citizen housing development" means a residential development developed, substantially rehabilitated, or substantially renovated for, senior citizens that meets any of the following requirements:

(A) At least 70 dwelling units, built prior to January 1, 1996, or at least 150 dwelling units built on or after January 1, 1996, in a metropolitan statistical area, as defined by the Federal Committee on Metropolitan Statistical Areas, with a population of at least 1,000

residents per square mile or 1,000,000 total residents, based on the 1990 census.

(B) At least 100 dwelling units in a metropolitan statistical area, as defined by the Federal Committee on Metropolitan Statistical Areas, with a population not to exceed 999 residents per square mile and not to exceed 399,999 total residents, based on the 1990 census.

(C) At least 35 dwelling units in any other area.

The number of dwelling units within a development includes all dwelling units developed, whether in single or multiple phases. Developments commenced after July 1, 1986, shall be required to have been issued a public report as a senior citizen housing development under Section 11010.05 of the Business and Professions Code.

(4) “Dwelling unit” or “housing” means any residential accommodation other than a mobilehome.

(5) “Cohabitant” refers to persons who live together as husband and wife.

(6) “Permitted health care resident” means a person hired to provide live-in, long-term, or terminal health care to a qualifying resident.

(d) The covenants, conditions, and restrictions or other documents or written policy shall not limit occupancy, residency, or use on the basis of age more proscriptively than to require that one person in residence in each dwelling unit may be required to be a senior citizen and that each other resident in the same dwelling unit may be required to be a qualified permanent resident.

(e) The covenants, conditions, and restrictions or other documents or written policy shall permit temporary residency, as a guest of a senior citizen or qualified permanent resident, by a person of less than 45 years of age for periods of time, not less than 60 days in any year, that are specified in the covenants, conditions, and restrictions or other documents or written policy.

(f) Upon the death or dissolution of marriage, or upon hospitalization, or other prolonged absence of the qualifying resident, any qualified permanent resident shall be entitled to continue his or her occupancy, residency, or use of the dwelling unit as a permitted resident.

(g) The condominium, stock cooperative, limited-equity housing cooperative, planned development, or multiple-family residential rental property shall have been developed for, and initially been put to use as, housing for senior citizens, or shall have been substantially rehabilitated or renovated for, and immediately afterward put to use as, housing for senior citizens, as provided in this section.

(h) The covenants, conditions, and restrictions or other documents or written policies applicable to any condominium, stock cooperative, limited-equity housing cooperative, planned development, or multiple-family residential property that contained

age restrictions on January 1, 1984, shall be enforceable only to the extent permitted by this section, notwithstanding lower age restrictions contained in those documents or policies.

(i) Any person who has the right to reside in, occupy, or use the housing or an unimproved lot subject to this section on January 1, 1985, shall not be deprived of the right to continue that residency, occupancy, or use as the result of the enactment of this section.

(j) The covenants, conditions, and restrictions or other documents or written policy of the senior citizen housing development shall permit the occupancy of a dwelling unit by a permitted health care resident during any period that the person is actually providing live-in, long-term, or hospice health care to a qualifying resident for compensation.

(k) Notwithstanding any other provision of this section, this section shall not apply to the County of Riverside.

SEC. 4. Section 51.4 of the Civil Code is amended to read:

51.4. (a) The Legislature finds and declares that the requirements for senior housing under Sections 51.2 and 51.3 are more stringent than the requirements for that housing under the federal Fair Housing Amendments Act of 1988 (Public Law 100-430) in recognition of the acute shortage of housing for families with children in California. The Legislature further finds and declares that the special design requirements for senior housing under Sections 51.2 and 51.3 may pose a hardship to some housing developments which were constructed before the decision in *Marina Point Ltd. v. Wolfson* (1982), 30 Cal. 3d 72. The Legislature further finds and declares that the requirement for specially designed accommodations in senior housing under Section 51.2 and 51.3 provides important benefits to senior citizens and also ensures that housing exempt from the prohibition of age discrimination is carefully tailored to meet the compelling societal interest in providing senior housing. Therefore, it is the intent of the Legislature to permit a narrow, time-limited exception to the requirement that senior housing be specially designed.

(b) A housing development constructed before February 8, 1982, shall be exempt from Section 51 to the extent specified in Section 51.2 if (1) it meets the requirements of Sections 51.2 and 51.3, other than the requirement that the housing be specially designed to meet the physical and social needs of senior citizens, (2) it is not practicable to meet that requirement in the relevant geographic area where the housing development is located, and (3) the housing development is necessary to provide important housing opportunities for senior citizens. As used in this section, "relevant geographic area" has the same meaning as that term is used in Section 100.304 of Title 24 of the Code of Federal Regulations.

(c) In any action under Section 51, the exemption under this section shall be sustained only if it is demonstrated through credible

and objective evidence that application of a requirement for specially designed accommodations to meet the physical and social needs of senior citizens would result in depriving senior citizens in the relevant geographic area of needed and desired housing. The factors to be considered by the court in determining the applicability of this section shall include, but not be limited to, all of the following:

(1) Whether the owner or manager of the housing facility has endeavored to provide specially designed accommodations to meet the physical and social needs of senior citizens persons either directly or by some other entity. Demonstrating that these accommodations would be expensive to provide is not alone sufficient to demonstrate their impracticability.

(2) The amount of rent charged for dwellings in the housing development seeking an exemption under this section if the dwellings are rented, or the price of the dwellings if they are offered for sale.

(3) The income range of the residents of the housing development.

(4) The demand for housing for senior citizens in the affected geographic area.

(5) The range of housing choices for senior citizens within the relevant geographic area.

(6) The availability of other similarly priced housing for senior citizens in the relevant geographic area. If similarly priced senior citizen housing with specially designed accommodations is reasonably available in the relevant geographic area, then the housing facility does not meet the requirements for exemption under this section.

(7) The vacancy rate of the housing development.

(d) Any person who resided in, occupied, or used the housing subject to this section prior to January 1, 1990, shall not be deprived of the right to continue that residency, occupancy, or use as the result of this section.

(e) This section shall not apply to the County of Riverside.

SEC. 5. Section 51.10 is added to the Civil Code, to read:

51.10. (a) Section 51 shall be construed to prohibit a business establishment from discriminating in the sale or rental of housing based upon age. A business establishment may establish and preserve housing for senior citizens, pursuant to Section 51.11, except housing as to which Section 51.11 is preempted by the prohibition in the federal Fair Housing Amendments Act of 1988 (P.L. 100-430) and implementing regulations against discrimination on the basis of familial status.

(b) This section is intended to clarify the holdings in *Marina Point, Ltd., v. Wolfson* (1982), 30 Cal. 3d 721, and *O'Connor v. Village Green Owners Association* (1983), 33 Cal. 3d 790.

(c) This section shall only apply to the County of Riverside.

SEC. 6. Section 51.11 is added to the Civil Code, to read:

51.11. (a) The Legislature finds and declares that this section is essential to establish and preserve housing for senior citizens. There are senior citizens who need special living environments, and find that there is an inadequate supply of this type of housing in the state.

(b) For the purposes of this section, the following definitions apply:

(1) “Qualifying resident” or “senior citizen” means a person 62 years of age or older, or 55 years of age or older in a senior citizen housing development.

(2) “Qualified permanent resident” means a person who meets all of the following requirements:

(A) Was residing with the qualifying resident or senior citizen prior to the death, hospitalization, or other prolonged absence of, or the dissolution of marriage with, the qualifying resident or senior citizen.

(B) Was 45 years of age or older, or was a spouse, cohabitant, or person providing primary physical or economic support to the qualifying resident or senior citizen.

(C) Has an ownership interest in, or is in expectation of an ownership interest in, the dwelling unit within the housing development that limits occupancy, residency, or use on the basis of age.

(3) “Qualified permanent resident” also means a permanently physically or mentally impaired or terminally ill adult who is a dependent child of the qualifying resident, senior citizen, or qualified permanent resident as defined in paragraph (2) of this subdivision, unless the board of directors or other governing body of the senior citizen housing development determines that there are special circumstances to disallow this particular dependent child as a qualified permanent resident. Special circumstances means a condition wherein this dependent child is or may be harmful to himself or herself or others.

(4) “Senior citizen housing development” means a residential development developed with more than 20 units as a senior community by its developer, zoned as a senior community by a local governmental entity, or characterized as a senior community in its governing documents, as these are defined in Section 1351, or qualified as a senior community under the federal Fair Housing Amendment Act of 1988, as amended. Developments commenced after July 1, 1986, and before January 1, 1997, shall be required to have been issued a public report as a senior citizen housing development under Section 11010.05 of the Business and Professions Code. However, developments may elect to amend their governing documents to become a senior citizen housing development after the expiration date of the public report.

(5) “Dwelling unit” or “housing” means any residential accommodation other than a mobilehome.

(6) “Cohabitant” refers to persons who live together as husband and wife.

(7) “Permitted health care resident” means a person hired to provide live-in, long-term, or terminal health care to a qualifying resident.

(c) The covenants, conditions, and restrictions or other documents or written policy shall not limit occupancy, residency, or use on the basis of age more restrictively than to require that one person in residence in each dwelling unit may be required to be a senior citizen and that each other resident in the same dwelling unit may be required to be a qualified permanent resident or permitted health care resident.

(d) The covenants, conditions, and restrictions or other documents or written policy shall permit temporary residency, as a guest of a senior citizen or qualified permanent resident, by a person of less than 55 years of age for periods of time, not more than 60 days in any year, that are specified in the covenants, conditions, and restrictions or other documents or written policy.

(e) Upon the death or dissolution of marriage, or upon hospitalization, or other prolonged absence of the qualifying resident, any qualified permanent resident shall be entitled to continue his or her occupancy, residency, or use of the dwelling unit as a permitted resident.

(f) The covenants, conditions, and restrictions or other documents or written policies applicable to any condominium, stock cooperative, limited-equity housing cooperative, planned development, or multiple-family residential property that contained age restrictions on January 1, 1984, shall be enforceable only to the extent permitted by this section, notwithstanding lower age restrictions contained in those documents or policies.

(g) Any person who has the right to reside in, occupy, or use the housing or an unimproved lot subject to this section on or after January 1, 1985, shall not be deprived of the right to continue that residency, occupancy, or use as the result of the enactment of this section by Senate Bill 2097 of the 1995–96 Regular Session.

(h) A housing development may qualify as a senior citizen housing development under this section even though, as of January 1, 1997, it does not meet the definition of a senior citizen housing development specified in subdivision (b), if the development complies with that definition for every unit that becomes occupied after January 1, 1997, and if the development was once within that definition, and then became noncompliant with the definition as the result of any one of the following:

(1) The development was ordered by a court or a local, state, or federal enforcement agency to allow persons other than qualifying

residents, qualified permanent residents, or permitted health care residents to reside in the development.

(2) The development received a notice of a pending or proposed action in, or by, a court, or a local, state, or federal enforcement agency, which action could have resulted in the development being ordered by a court or a state or federal enforcement agency to allow persons other than qualifying residents, qualified permanent residents, or permitted health care residents to reside in the development.

(3) The development agreed to allow persons other than qualifying residents, qualified permanent residents, or permitted health care residents to reside in the development by entering into a stipulation, conciliation agreement, or settlement agreement with a local, state, or federal enforcement agency or with a private party who had filed, or indicated an intent to file, a complaint against the development with a local, state, or federal enforcement agency, or file an action in a court.

(4) The development allowed persons other than qualifying residents, qualified permanent residents, or permitted health care residents to reside in the development on the advice of counsel in order to prevent the possibility of an action being filed by a private party or by a local, state, or federal enforcement agency.

(i) The covenants, conditions, and restrictions or other documents or written policy of the senior citizen housing development shall permit the occupancy of a dwelling unit by a permitted health care resident during any period that the person is actually providing live-in, long-term, or hospice health care to a qualifying resident for compensation.

(j) This section shall only apply to the County of Riverside.

SEC. 7. Section 51.12 is added to the Civil Code, to read:

51.12. (a) The Legislature finds and declares that the requirements for senior housing under Sections 51.10 and 51.11 are more stringent than the requirements for that housing under the federal Fair Housing Amendments Act of 1988 (Public Law 100-430).

(b) Any person who resided in, occupied, or used the housing subject to Section 51.4 prior to January 1, 1990, shall not be deprived of the right to continue that residency, or occupancy, or use as the result of this section.

(c) This section shall only apply to the County of Riverside.

SEC. 8. The Legislature finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the Constitution due to the unique circumstances that, in the County of Riverside, there is an unusually large concentration of senior communities, and that those senior communities have been subject to an unusually large number of civil enforcement actions and litigation by private parties, notwithstanding the good faith beliefs of those communities that they were in compliance with the law. The

Legislature therefore finds and declares that these unique circumstances justify making the provisions of Senate Bill 1097 of the 1995–96 Regular Session applicable only in the County of Riverside.

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